

PUBLIC LAWS OF MAINE

Second Special Session of the 121st

PART B

Sec. B-1. Transition. Notwithstanding the Maine Revised Statutes, Title 22 and Title 34-B, the following provisions apply to the reassignment of the duties and responsibilities of the Department of Human Services and the Department of Behavioral and Developmental Services to the Department of Health and Human Services.

1. The Department of Human Services and the Department of Behavioral and Developmental Services as heretofore created and established by law are incorporated into the Department of Health and Human Services. All references to, responsibilities of and authority conferred upon the Department of Human Services and the Department of Behavioral and Developmental Services, and those departments' predecessors, throughout the Maine Revised Statutes are deemed to refer to and vest in the Department of Health and Human Services created by this Act, as the successor department. The Department of Health and Human Services is the successor in every way to the powers, duties and functions as assigned in the Maine Revised Statutes, Title 22 to the Department of Human Services and Title 34-B to the Department of Behavioral and Developmental Services, as they pertain to services provided to adults, children and families under this Act.

2. Notwithstanding the provisions of the Maine Revised Statutes, Title 5, all accrued expenditures, assets, liabilities, balances of appropriations, allocations, transfers, revenues or other available funds in an account or subdivision of an account of the Department of Human Services and the Department of Behavioral and Developmental Services that pertain to the duties of the Department of Health and Human Services as set forth in this Act must be transferred to the proper accounts of the Department of Health and Human Services by the State Controller or by financial order upon the request of the State Budget Officer and with the approval of the Governor.

3. All rules of the Department of Human Services and the Department of Behavioral and Developmental Services, as they pertain to the duties of the Department of Health and Human Services as set forth in this Act, that are in effect on the effective date of this Act remain in effect until rescinded, revised or amended.

4. All contracts, agreements and compacts of the Department of Human Services and the Department of Behavioral and Developmental Services, as they pertain to the duties set forth in this Act, that are in effect on the effective date of this Act remain in effect until they expire or are altered by the parties involved in the contracts or agreements. The Department of Health and Human Services is the successor agency for all federal block grants and programs administered under the United States Social Security Act, as amended, and any other federal programs, grants and contracts.

5. All records of the Department of Human Services and the Department of Behavioral and Developmental Services, as they pertain to the duties set forth in this Act, must be transferred to the Department of Health and Human Services as necessary to implement this Act.

6. All property and equipment of any bureau, division or program of the Department of Human Services and the Department of Behavioral and Developmental Services pertaining to the duties set forth in this Act are transferred to the Department of Health and Human Services as necessary to implement this Act.

7. Notwithstanding the Maine Revised Statutes, Title 22-A, section 204 or any other provision of law, upon the effective date of this Act, the individual holding the position of Commissioner of Human Services becomes the Commissioner of Health and Human Services without the need of appointment or confirmation. The

Commissioner of Health and Human Services shall assume and is vested with all of the duties and powers of that office, as well as the duties and powers of the office of the Commissioner of Human Services and the office of the Commissioner of Behavioral and Developmental Services. This provision is intended to change the procedure for appointment and confirmation of the first Commissioner of Health and Human Services.

8. Employees of the Department of Health and Human Services who were employees of the Department of Human Services and the Department of Behavioral and Developmental Services immediately prior to the effective date of this Act retain all their employee rights, privileges and benefits, including sick leave, vacation and seniority, provided under the Civil Service Law or collective bargaining agreements. The Department of Administrative and Financial Services, Bureau of Human Resources shall provide assistance to the affected departments and shall assist with the orderly implementation of this subsection.

9. The Commissioner of Health and Human Services shall consolidate the following functions of the Department of Human Services and the Department of Behavioral and Developmental Services:

- A. Administrative components that provide for, without limitation, the following functions: internal auditing; external auditing; financial management; human resources; information technology and data collection and management; facilities management; contracting; licensing; permitting and inspecting; training; administrative appeals; communications and legislative relations; rate setting; and rulemaking; and
- B. Adult protective functions.

10. By January 31, 2005, the Commissioner of Health and Human Services shall submit a report, including recommendations and any necessary legislation, to the Governor and the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the establishment and implementation of the Department of Health and Human Services. The report must include recommendations on the following issues:

A. Bureau structure, including the number, title and functions of bureaus and divisions within bureaus. In the development of recommendations regarding the bureau structure, the commissioner shall consider:

- (1) The unique needs of special populations, including, but not limited to, children, the elderly, persons with mental health needs, persons with mental retardation or developmental disabilities and persons affected by substance abuse; and
- (2) The possible integration of the functions of the Department of Human Services, Bureau of Family Independence into a new bureau of children and families;

B. Administrative structure and functions, including:

- (1) Planning and quality assurance;
- (2) Staff training and professional development;
- (3) Regional structure and administrative functions; and
- (4) The employment status of division directors;

C. Program and service delivery functions, including:

- (1) A seamless system of care at the local level;
- (2) Information and referral, intake and case management services;
- (3) Guardianship and conservatorship services;
- (4) Resolution of consumer, provider and public inquiries and complaints;

- (5) Advocacy services; and
- (6) Long-term care ombuds services;

D. Advisory boards, including:

- (1) Integration and consolidation of existing advisory boards, councils and commissions that serve the Department of Human Services and the Department of Behavioral and Developmental Services; and
- (2) Opportunities to ensure that advisory bodies to the new department operate efficiently and effectively; and

E. The child welfare ombudsman program established as an independent program within the Executive Department under the Maine Revised Statutes, Title 22, section 4087-A. In developing recommendations regarding this program, the commissioner shall consider:

- (1) Program independence and structure; and
- (2) The 2003 annual report of the ombudsman submitted pursuant to Title 22, section 4087-A, subsection 10.

Following receipt and review of the report, the joint standing committee of the Legislature having jurisdiction over health and human services matters may report out legislation to the 122nd Legislature.

11. The Commissioner of Health and Human Services shall work with the Commissioner of Education and the Commissioner of Corrections to review the delivery of child development services and juvenile justice services. By January 31, 2006, the Commissioner of Health and Human Services shall submit a report including recommendations and any necessary legislation to the Governor and the joint standing committee of the Legislature having jurisdiction over health and human services matters. Following receipt and review of the report, the committee may report out legislation to the Second Regular Session of the 122nd Legislature.

Sec. B-2. Conflicts and inconsistencies. If the Commissioner of Health and Human Services finds a conflict or inconsistency between provisions in the Maine Revised Statutes, Title 22 and Title 34-B or rules adopted under those titles, the commissioner shall attempt to resolve that conflict or inconsistency by interpreting the laws or rules together to give effect to the intent of the Legislature or agency, as the case may be. If the commissioner determines rulemaking is required to resolve a conflict or inconsistency, the commissioner may adopt rules as authorized under Title 22-A, section 205, subsection 2. In adopting rules under this section, the commissioner has sole discretion to determine whether an emergency exists. The commissioner shall notify the members of the joint standing committee of the Legislature having jurisdiction over health and human services matters prior to adopting any emergency rule under this section.

Sec. B-3. Legislation; schedule. The Commissioner of Health and Human Services, and designees selected by the commissioner, shall work with the joint standing committee of the Legislature having jurisdiction over health and human services matters and staff from the Office of Policy and Legal Analysis and the Office of the Revisor of Statutes to review those parts of the Maine Revised Statutes governing the Department of Health and Human Services, including but not limited to Titles 22, 22-A and 34-B. The purpose of the review is to develop legislation to consolidate existing law into Title 22-A, to update Title 22-A and to correct any errors and inconsistencies in law that result from this Act. By November 30, 2005 the commissioner and the committee shall agree on the format and organization of Title 22-A. By November 30, 2006 the commissioner shall submit the legislation developed pursuant to this section to the First Regular Session of the 123rd Legislature.

Sec. B-4. Interim meetings; authorized. The joint standing committee of the Legislature having jurisdiction over health and human services matters is authorized to meet as needed, but at least 3 times, during the 2004 legislative interim to carry out its responsibilities to oversee planning, service delivery and

implementation issues related to the establishment of the Department of Health and Human Services. At these meetings, the Commissioner of Health and Human Services shall brief the committee on planning issues, progress, challenges and the time line for implementation. The committee shall provide opportunities for consumers, providers and advocates to speak to the committee. The committee may submit legislation to the First Regular Session of the 122nd Legislature based on these meetings.

Sec. B-5. Working groups. During the period from July 2004 through December 2005, the Commissioner of Health and Human Services shall convene advisory working groups to consider planning, service delivery and implementation issues related to the establishment of the Department of Health and Human Services. The working groups shall review the issues identified in Part B, section 1, subsection 10. The working groups must include broad representation from consumers, providers, advocates and members of the public.

Sec. B-6. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Department of Human Services" or "Department of Behavioral and Developmental Services" appear or reference is made to either of those departments with reference to the duties transferred to the Department of Health and Human Services as set forth in this Act, they are amended to read or mean, as the case may be, "Department of Health and Human Services." The Revisor of Statutes shall implement this revision when updating, publishing or republishing statutes.

Sec. B-7. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Commissioner of Human Services" or "Commissioner of Behavioral and Developmental Services" appear or reference is made to either of these positions with reference to the duties transferred to the Commissioner of Health and Human Services as set forth in this Act, they are amended to read or mean, as the case may be, "Commissioner of Health and Human Services." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. B-8. Budget. The Department of Administrative and Financial Services, Bureau of Budget shall work with the employees of the Department of Human Services and the Department of Behavioral and Developmental Services with regard to the duties transferred to the Department of Health and Human Services as set forth in this Act to develop the budget for the Department of Health and Human Services.

Sec. B-9. Federal approval. If the Commissioner of Health and Human Services determines that federal approval will not be obtained for any part of this Act that requires federal approval, the commissioner shall notify the joint standing committee of the Legislature having jurisdiction over health and human services matters, the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the Executive Director of the Legislative Council.